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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,011	11/14/2003	Robert Poncelet	COS-899 (AIP-1092US)	1975
25264	7590	08/15/2006		
FINA TECHNOLOGY INC PO BOX 674412 HOUSTON, TX 77267-4412			EXAMINER TESKIN, FRED M	
			ART UNIT	PAPER NUMBER

1713

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/714,011	Applicant(s) PONCELET ET AL.	
	Examiner Fred M. Teskin	Art Unit 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>111204</u> . | 6) <input type="checkbox"/> Other: ____ |

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Claims 1-26 are currently pending and under examination.

The disclosure is objected to because of the following informalities:

A clerical error is noted in paragraph 0019: "2,5 dimethyl 2,5-Di-t-buthylperoxy hexane" should read --2,5-dimethyl-2,5-di-t-butylperoxy hexane--.

Appropriate correction of the specification is required.

Claims 1, 4, 6-9 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 6-9 and 12-14 are confusing and inconsistent with the base claim as regards temperature at which the Dynatup Impact test is to be conducted. Note that whereas claim 1 calls for a temperature of *less than* or equal to -40°C , said dependent claims recite temperatures of less than or equal to about -30°C (claims 4, 6, 8, 9, 13, 14) or about -15°C (claims 7, 12). Temperatures such as -15°C and -30°C are actually *greater* (less negative) than -40°C , not "less than" as stated in claim 1. This inconsistency creates uncertainty as to the scope of temperatures at which the impact test may be performed when determining whether or not a given copolymer infringes. Clarification and appropriate correction are required.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that

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the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22, 25 and 26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 6803421 to Joseph.

Joseph discloses impact copolymer compositions meeting the claim limitations as to melt flow rate (MFR) and composition, but does not expressly teach the requisite values of flexural modulus and maximum load under Dynatup Impact test.

More specifically, Joseph discloses propylene polymer compositions comprising high flow blends of impact copolymer, plastomer and filler useful for injection molding applications; see column 2, lines 45+, where "high flow" is defined to mean blends having melt flow rate (MFR) of 20 g/10 min or greater. At column 3, lines 31+, the propylene polymers are described as propylene-ethylene copolymers comprised of crystalline propylene homopolymer and amorphous or rubber ethylene-propylene copolymer phases; copolymer ethylene content is said to range from 5 to 25 wt. %, with MFRs ranging from 10 to 60 g/10 min, more preferably from 15 to 40 g/10 min. The copolymers are preferably prepared using two serially connected reactors to provide reactor-made intimate mixtures of propylene homopolymer and propylene-ethylene copolymer (*id.*, lines 48-52).

Impact copolymer blends meeting the claims limitations as to MFR and composition (i.e., propylene/ethylene as per claims 17-19) are detailed in the working examples: see Examples 1-3 wherein the impact copolymer was made by visbreaking as per the procedure described at column 6, line 53 to column 7, line 10.

The exemplified blends are not characterized in terms of flexural modulus or maximum load under Dynatup Impact test. Nevertheless, the blends were

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prepared by substantially the same procedure as the instantly claimed copolymer.

Thus, the patentee's visbreaking procedure entails subjecting a *reactor-made mixture* of propylene copolymer as propylene impact copolymer to visbreaking using the peroxide 2,5-dimethyl-2,5-di-t-butylperoxy hexane in an amount designed to give an MFR of approximately 35 g/10 min (col. 6, ll. 53-55 and col. 7, ll. 2-6). The claimed copolymer, which has a MFR of at least about 15 g/10min (claims 1, 25, 26) or at least about 20 or 25 g/10 min (claims 20, 21), is similarly prepared via a sequential, two-reactor polymerization of propylene and ethylene, with the MFR subsequently increased by such techniques as visbreaking, using peroxides, including the same peroxide employed by Joseph (*cf.*, specification at paragraphs 0011, 0012, 0018 and 0019).

In view of the similarity in preparation procedure and the identity of impact copolymer composition and MFR, there is a plausible basis for inferring that the undisclosed properties of the claimed copolymer are intrinsic features of the propylene polymer compositions described by Joseph.

Where, as here, the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness is established. *In re Best*, 195 USPQ 430, 433 (CCPA 1977). When there is sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not. *In re Spada*, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

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Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joseph, in view of the acknowledged state of the prior art as set out in paragraphs 0002 and 0003 of the specification.

Joseph is applied as in the preceding rejection. The high flow impact copolymer blends of Joseph are taught to be suitable for manufacturing injection molded parts which require high impact, low temperature ductility and dimensional stability (col. 2, ll. 47+). The particular articles claimed, i.e., automobile interior trim components and an automobile dashboard, are not disclosed.

However, as acknowledged in the background section of the present specification, a class of propylene polymers termed impact copolymers *has been developed* to meet the specialized needs of vehicle interiors such as interior trim components and dashboards. As the impact copolymer compositions of Joseph fall within this known class of propylene polymers, one of ordinary skill would have had a reasonable expectation of successfully using them in the same applications - i.e., to manufacture vehicle interior components as claimed. Thus, consideration of Joseph together with the acknowledged prior art would have rendered obvious the subject matter of claims 23-24 to one having ordinary skill in the art at the time of applicants' invention.

No claims are allowable at this time.


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Any inquiry concerning this communication should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FMTeskin/12-10-05



FRED TESKIN
PRIMARY EXAMINER
1713